

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0420P

Withholding Tax

For the Month of December 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of the monthly withholding return for the month of December 2004.

The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the error was inadvertent, and, the taxpayer has a good compliance record.

With regard to the compliance record, the taxpayer has had several errors including a penalty in the amount of \$1,226 for September 2001 that was abated. The Department does not feel the taxpayer's compliance record is a factor in the abatement of penalty.

With regard to the inadvertent error, the taxpayer was confused about the month-end due date since it was year-end and office activity was hectic. As a result, the taxpayer was four days late. The Department does not feel the taxpayer's confusion (inattention) would be a factor in the abatement of penalty.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.